SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 27 2015
ARTHUR JOHNSTON
BY ________ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THE HERTZ CORPORATION	§	
	§	
VERSUS	§	**CIVIL ACTION NO.** 1:15cv163LG-RHW
	§	
DONOVAN T. LANGDON, TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC., PROGRESSIVE INSURANCE COMPANY, LUCINDA A. JOHNSON, APRIL WESS, CAROLYN BETHER and KEITHA MCGEE	§ § § § § §	

COMPLAINT FOR DECLARATORY JUDGMENT

This Complaint for Declaratory Judgment is filed by The Hertz Corporation ("Hertz") against Donovan T. Langdon, Transocean Offshore Deepwater Drilling, Inc. ("Transocean"), Progressive Insurance Company ("Progressive"), Lucinda A. Johnson, April Wess, Carolyn Bether and Keitha McGee (collectively, "Defendants").

PRELIMINARY STATEMENT

1.

This is an action for declaratory judgment brought pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure to determine an actual case or controversy regarding Defendants' claims and demands for indemnity, defense and other relief under a Rental Agreement between Hertz and Donovan Langdon (attached as Exhibit A), and a Corporate Account Agreement between Hertz and Transocean (attached as Exhibit B).

2.

This dispute arises out of a vehicular collision on March 30, 2014, at approximately

2:13 a.m., on Highway 90 near its intersection with Highway 57 in Gautier, Mississippi. Mr. Langdon was operating a Hertz-provided rental vehicle, and was involved in a collision with a vehicle believed owned by Ms. Wess and allegedly occupied by Ms. Johnson, Ms. Bether, and Ms. McGee, all of whom claim injuries and damages as a result.

3.

Ms. Johnson has filed suit against Mr. Langdon, Transocean and others. The suit, styled *Lucinda A. Johnson v. Donovan T. Langdon, Transocean Offshore Deepwater Drilling, Inc., Hamilton-Ryker IT Solutions, LLC, iSymphony, LLC, WMS iSymphony, Inc., and Steverson & Company, Inc.*, is pending on this Court's docket as Cause No. 1:14cv405LG-RHW ("Underlying Suit") (Amended Complaint attached as Exhibit C). Ms. Bether and Ms. McGee are not believed to have filed suit to-date.

4.

Some or all of the Defendants have incurred and/or will incur significant liabilities in connection with the March 30, 2014 collision.

5.

On August 27, 2014, Transocean demanded defense and indemnity from Hertz in connection with claims emanating from the March 30, 2014 collision. Hertz declined to defend or indemnify Transocean based on the terms of the Rental Agreement and the Corporate Account Agreement and the alleged underlying factual circumstances.

6.

On September 22, 2014, Mr. Langdon likewise demanded defense and indemnity from Hertz. Hertz agreed to defend Mr. Langdon under a reservation of rights as to its defenses existing under the Rental Agreement and the Corporate Account Agreement.

7.

Hertz seeks a judgment declaring that it has no duty under the relevant agreements to indemnify or defend Transocean or Mr. Langdon for any claims related to the March 30, 2014 collision. Hertz also seeks a judgment declaring that Transocean and/or Mr. Langdon must reimburse Hertz for all attorney's fees and costs it has or will expend in Mr. Langdon's defense to the date of judgment herein.

PARTIES

8.

Hertz is not an insurance company, but it is a party to the Rental Agreement and the Corporate Account Agreement, which provide reciprocal indemnity and defense obligations between and among Hertz, Transocean and Mr. Langdon under specified circumstances. Hertz is a Delaware corporation with its principal place of business in Florida, and is registered to do business in Mississippi.

9.

Defendants are:

a) Donovan T. Langdon, upon information and belief, is a resident of Harris County, Texas, and may be served with process wherever he might be found or at 19800 Cypress Church Road, Cypress, Texas 77433.

b) Transocean Offshore Deepwater Drilling, Inc., is a Texas corporation authorized to do and doing business in the State of Mississippi and may be served pursuant to the Rules of Civil Procedure.

c) Progressive Specialty Insurance Agency, Inc., is an Ohio corporation, and may be served pursuant to the Rules of Civil Procedure.

d) Lucinda A. Johnson, upon information and belief, is a resident of Jackson County, Mississippi, and may be served with process wherever she might be found.

e) April Wess, upon information and belief, is a resident of Jackson County, Mississippi, and may be served with process wherever she might be found.

f) Carolyn Bether, upon information and belief, is a resident of Jackson County, Mississippi, and may be served with process wherever she might be found.

g) Keitha McGee, upon information and belief, is a resident of Jackson County, Mississippi, and may be served with process wherever she might be found.

JURISDICTION AND VENUE

10.

The jurisdiction of this Court under 28 U.S.C. § 1332 is based upon the complete diversity of citizenship between Plaintiff and Defendants. The amount in controversy exceeds the sum of $75,000 exclusive of interest and costs. The Underlying Suit, against which Transocean and Mr. Langdon have sought indemnity and defense, is already pending on this Court's docket and alone exceeds the minimum jurisdictional threshold of the required amount in controversy.

11.

Venue is proper in this district pursuant to 28 U.S.C. §1391 because this is a judicial district in which Defendants are subject to personal jurisdiction and because the collision at issue took place in Jackson County, Mississippi.

GENERAL ALLEGATIONS

12.

Mr. Langdon, who on informed belief is not directly employed by Transocean, leased a vehicle from Hertz at its West Mobile, Alabama, location on January 4, 2014. Mr. Langdon signed the Rental Agreement, which includes specific Terms and Conditions. Mr. Langdon also represented he was "authorized to receive the benefits extended to employees/members" of Transocean. Those "benefits" are set forth in the Corporate Account Agreement.

13.

The Rental Agreement and the Corporate Account Agreement under certain circumstances not present here may include defense and indemnity obligations in favor of Mr. Langdon, but, as is customary in the industry, such protection is limited in scope. Therefore, reference to the Rental Agreement and the Corporate Account Agreement is necessary to determine the scope of the protection.

14.

Mr. Langdon agreed to the Rental Agreement's Terms and Conditions, which provide:

> THESE TERMS AND CONDITIONS, THE RENTAL RECORD SIGNED BY YOU AND ANY OTHER DOCUMENTS WHICH YOU ARE REQUIRED TO SIGN WHEN YOU RENT THE CAR, TOGETHER CONSTITUTE THE AGREEMENT ("THIS AGREEMENT") FOR THE RENTAL OF THE VEHICLE IDENTIFIED ON THE RENTAL RECORD, INCLUDING ALL OF ITS PARTS ("CAR"). THIS AGREEMENT IS BETWEEN YOU AND THE HERTZ COMPANY WHICH IS IDENTIFIED ON THE RENTAL RECORD ("HERTZ").

15.

The Terms and Conditions prohibited Mr. Langdon from operating Hertz's vehicle under the influence of alcohol and other drugs, while committing a crime, or while engaging in willful misconduct, and from obtaining the vehicle through misrepresentation:

> **5.** PROHIBITED USE OF THE CAR
> NEITHER YOU NOR ANY AUTHORIZED OPERATOR MAY:
> . . .

PD.17157916.1

> d. ENGAGE IN ANY WILLFUL OR WANTON MISCONDUCT…;
> e. USE OR PERMIT THE USE OF THE CAR BY ANYONE:
> 1) WHILE LEGALLY INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR OTHER ABSORBED ELEMENTS WHICH MAY ADVERSELY AFFECT A PERSON'S ABILITY TO DRIVE SAFELY;
> 2) FOR ANY PURPOSE THAT COULD PROPERLY BE CHARGED AS A CRIME, SUCH AS THE ILLEGAL TRANSPORTATION OF PERSONS, DRUGS OR CONTRABAND;
> …
> 7) IF THE CAR HAS BEEN OBTAINED FROM HERTZ BY FRAUD OR MISREPRESENTATION; …
> …
> ANY USE OF THE CAR IN A MANNER PROHIBITED ABOVE:
> …
> TO THE EXTENT PERMITTED BY APPLICABLE LAW WILL CAUSE YOU TO LOSE THE BENEFIT OF ALL PERSONAL ACCIDENT INSURANCE ("PAI") AND PERSONAL EFFECTS COVERAGE ("PEC"), LIABILITY INSURANCE SUPPLEMENT ("LIS") COVERAGE AND LIABILITY PROTECTION PROVIDED BY HERTZ UNDER THIS AGREEMENT; …

16.

The Corporate Account Agreement between Hertz and Transocean establishes split liability limits of $100,000/300,000 per person/accident and $25,000 for property damage, but only subject to the Terms and Conditions of the Rental Agreement:

> 1. Notwithstanding any lesser amounts specified as the limits of protection, if any, or contrary terms of protection under "Liability Protection" in any Rental Agreement pertaining to any rental from Hertz under the Agreement ("Rental Agreement"), Hertz will provide primary protection in the United States and District of Columbia, subject to and in accordance with the provisions of the Rental Agreement in effect at the time and place of rental for such rental, for bodily injury or death up to a limit of $100,000 for each person and up to a limit of $300,000 for each accident, and up to a limit of $25,000 for property damage, unless the rental agreement or

PD.17157916.1

> applicable law requires higher limits of protection, in which case such higher limits shall apply to that rental.
>
> 2. Within the limits stated above, Hertz will indemnify, hold harmless, and defend [Transocean] employee renters ("Renter") and fellow employees who operate the car incidental to their business duties, from and against liability to third parties, excluding any Renter's or any Authorized Operator's family members related by blood, marriage or adoption residing with Renter or them for bodily injury, including death and property damage. This will conform to the basic requirements of any applicable "No Fault" law but does not include "Uninsured Motorist", "Underinsured Motorist", "Supplementary No Fault" or any other optional coverage. To the extent permitted by law, Hertz and [Transocean] on behalf of itself and its Renters hereby reject the inclusion of any such coverage. If such protection is imposed by operation of law, then the limits of such protection will be the minimum required for primary coverage by the law of the jurisdiction in which the accident occurred.

17.

The Corporate Account Agreement obliges Transocean to indemnify Hertz for sums paid in settlement and defense of the claim if Mr. Langdon was operating Hertz's vehicle in violation of the Terms and Conditions:

> 5. The parties hereto agree that, if Hertz is required to pay damages arising from a liability claim made against Hertz and/or its Authorized Operator stemming from the use of a Hertz vehicle on a business rental by an employee of [Transocean] in violation of the terms and conditions of the applicable Rental Agreement, [Transocean] shall indemnify Hertz for all sums paid by Hertz in settlement of such liability claims, including the costs for defending such claims.

18.

Ms. Johnson, in her Amended Complaint filed in the Underlying Suit (Exhibit C), alleges, among other things, that Mr. Langdon was operating his vehicle under the influence of alcohol or other intoxicants in violation of Miss. Code. Ann. Sec. 63-11-30 and with a suspended license. Ms. Johnson alternately claims Mr. Langdon was employed by Transocean and other entities, including Hamilton-Ryker IT Solutions, LLC, *i*Symphony, LLC, WMS *i*Symphony, Inc., and Steverson & Company, Inc. With the exception of Transocean, none of these entities are parties to or intended beneficiaries of either the Rental Agreement or the Corporate Account Agreement and are consequently not joined in this action.

19.

Because Mr. Langdon's operation of the subject vehicle constituted a use prohibited by the Terms and Conditions that was not incidental to any Transocean-employee business duties, Mr. Langdon lost any liability and defense protection provided by the Rental Agreement or the Corporate Account Agreement.

20.

Other terms, conditions, limitations and exclusions of the Rental Agreement and the Corporate Account Agreement, including but not limited to Mr. Langdon's misrepresentation of his licensure status to Hertz when leasing the vehicle, may preclude liability and defense protection to Defendants in connection with the liabilities in question.

DECLARATORY JUDGMENT

21.

The allegations contained in Paragraphs 1-20 are incorporated herein.

22.

Transocean's and Mr. Langdon's demands for defense and indemnity present an actual and existing controversy between Hertz and Defendants with respect to the existence and scope of Hertz's rights and obligations, if any, in connection with liabilities arising from the March 30, 2014 collision. Under any reasonable interpretation, multiple provisions of the Agreements at issue preclude any duty on Hertz's part to indemnify or defend Transocean and Mr. Langdon.

23.

Hertz has paid attorney's fees and costs for Mr. Langdon's defense in the Underlying Suit. The Corporate Account Agreement obliges Transocean to indemnify Hertz against those fees and costs. Additionally, when Hertz agreed to defend Mr. Langdon under a reservation of rights, it explicitly reserved the right to seek reimbursement of fees and costs in the event it is determined Hertz itself had no duty to indemnify or defend.

24.

Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201-2202, Hertz seeks a judicial declaration of its rights and duties, if any, under the Rental Agreement and the Corporate Account Agreement. The Court's declaration would confer certainty on the parties with respect to their rights and obligations under these Agreements, and therefore will serve the interests of justice.

25.

Hertz pleads all other conditions, terms, limitations, definitions and exclusions of the Rental Agreement, the Corporate Account Agreement, and all other contracts or agreements by and between the parties herein, which may be found to be applicable as the investigation of this claim continues, and Hertz reserves the right to amend this Complaint for Declaratory Judgment as additional and/or more specific information becomes available.

PRAYER

Hertz prays for declaratory judgment in its favor confirming:

A. The Rental Agreement and the Corporate Account Agreement are valid and enforceable contracts.

B. Mr. Langdon misrepresented his licensure status and capacity with Transocean when he leased the vehicle in question.

C. Mr. Langdon operated the vehicle in a manner constituting a violation of the Terms and Conditions and other provisions of the Rental Agreement and the Corporate Account Agreement.

D. Consequently, Hertz has no duty to defend or indemnify either Transocean or Mr. Langdon.

E. Conversely, Transocean and/or Mr. Langdon have a duty indemnify, defend and otherwise hold Hertz harmless against all claims arising from the March 30, 2014 collision, including but not limited to reimbursement of Hertz's payment of Mr. Langdon's attorney's fees and costs for defending the Underlying Suit and any other claims up to the date of judgment herein.

F. In the event the Court finds Hertz does have any duty to defend and/or indemnify any other party, Hertz's duties are secondary to the duty of other parties, including but not limited to Transocean and Progressive, to indemnify and/or defend.

Hertz further prays for all such other and further relief as equity and the justice of this cause may require and permit.

Respectfully submitted, this 27th day of May, 2015.

THE HERTZ CORPORATION

PHELPS DUNBAR LLP

BY: ______________________________

Thear J. Lemoine, MS Bar No.: 99894
NorthCourt One | 2304 19th Street,
Suite 300
Gulfport, Mississippi 39501
Telephone: 228-679-1130
Telecopier: 228-679-1131
Email: lemoinet@phelps.com